

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Charles P. Kocoras	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	08 C 2656	DATE	June 2, 2008
CASE TITLE	Heath vs. Citibank N.A.		

## DOCKET ENTRY TEXT

Pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), the complaint is dismissed without prejudice. If Heath does not file an amended complaint that states a cognizable federal claim before June 13, 2008, the dismissal will become with prejudice to his refiling the case in federal court.

■ [ For further details see text below.]

Docketing to mail notices.

## ORDER

This matter comes before the court on the petition of Plaintiff Charles Heath to proceed *in forma pauperis*. According to the application, he has been unemployed since May 2007. He has no savings, but he receives over \$1000 per month from a pension. His wife is employed, but he provides no information about what she earns. In addition, the couple owns a home worth \$80,000 as well as two vehicles, which have a combined value of approximately \$4000. They have no dependents and Heath provides little information about his monthly expenses. Under normal circumstances, the details he has provided would be insufficient to permit this court to determine whether he could establish the indigence necessary to justify *in forma pauperis* status. However, it is futile to provide Heath with another opportunity to supply the needed information, since the complaint definitively establishes that he does not state a claim upon which a federal court can grant relief. He alleges that Defendant Citibank negligently failed to safely store his property in a safe deposit box, did not have secure operating procedures for the box, failed to investigate theft charges, and mishandled and misplaced documents. He asserts that this is a violation of 12 U.S.C. § 1882, but that statute does not create a private right of action in favor of individual depositors. *See Sadler v. Citibank, N.A.*, 947 F.2d 642, 643-44 (2d Cir. 1991). Accordingly, as negligence and conversion are state law causes of action and there is no allegation that the parties are of diverse citizenship or that the amount in controversy exceeds \$75,000, this case does not belong in federal court as currently pled.

Pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), the complaint is dismissed without prejudice. If Heath does not file an amended complaint that states a cognizable federal claim before June 13, 2008, the dismissal will become with prejudice to his refiling the case in federal court.

Dated: June 2, 2008



CHARLES P. KOCORAS  
U.S. District Court Judge